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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

<b>In re:</b>	)	
	)	<b>Chapter 15 Case</b>
<b>FAIRFIELD SENTRY LIMITED, et al.,</b>	)	
	)	<b>Case No: 10-13164 (SMB)</b>
<b>Debtors in Foreign Proceedings.</b>	)	
	)	<b>Jointly Administered</b>
	)	
<b>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Adv. Pro. No. 10-03496</b>
<b>-against-</b>	)	
	)	
<b>THEODOOR GGC AMSTERDAM, et al.,</b>	)	<b>Administratively</b>
	)	<b>Consolidated</b>
<b>Defendants.</b>	)	
	)	
<b>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Adv. Pro. No. 10-03635</b>
<b>-against-</b>	)	
	)	
<b>ABN AMRO Schweiz AG, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
<b>FAIRFIELD SENTRY LTD. (IN LIQUIDATION), et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Adv. Pro. No. 10-03636</b>
<b>-against-</b>	)	
	)	
<b>ABN AMRO Schweiz AG, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**FOREIGN REPRESENTATIVES' MEMORANDUM OF LAW  
IN OPPOSITION TO UNIFORTUNE CONSERVATIVE SIDE  
POCKET'S SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR LEAVE TO AMEND AND IN SUPPORT  
OF DEFENDANTS' MOTION TO DISMISS AND IN FURTHER SUPPORT OF  
FOREIGN REPRESENTATIVES' MOTION FOR LEAVE TO AMEND COMPLAINTS**

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Kenneth M. Krys and Charlotte Caulfield (together, the “Liquidators” or “Foreign Representatives”), in their capacities as the duly appointed Liquidators and Foreign Representatives of Fairfield Sentry Limited (In Liquidation) (“Sentry”), Fairfield Sigma Limited (In Liquidation) (“Sigma”), and Fairfield Lambda Limited (In Liquidation) (“Lambda,” and together with Sentry and Sigma, the “Funds”) in the consolidated adversary proceedings (the “Redeemer Actions”), by and through their undersigned counsel, respectfully submit this memorandum of law in opposition to the *Unifortune Conservative Side Pocket’s Supplemental Memorandum of Law in Opposition to Plaintiffs’ Motion For Leave to Amend and in Support of Defendants’ Motion to Dismiss* (“Defendant’s Joinder and Supplemental MTD”) and in further support of the Foreign Representatives’ motion for leave to amend the complaints in the Redeemer Actions (the “Motion to Amend”).<sup>1</sup> In opposition to Defendant’s Joinder and Supplemental MTD and in support of the Motion to Amend, the Liquidators state as follows:

### **PRELIMINARY STATEMENT**

Defendant<sup>2</sup> argues that “Allianzbank SPA/Unifortune Conservative Side Pocket”<sup>3</sup> was incorrectly named because it is purportedly a non-existing entity; however, the allegations in the Proposed Amended Complaint are based, in part, on the records of the Funds. Defendant does not argue that it did not receive the Redemption Payments at issue in this action and the

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<sup>1</sup> Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to them in the *Foreign Representative’s Memorandum of Law in Opposition to Defendants’ Consolidated Memorandum of Law and in Further Support of Foreign Representatives’ Motion for Leave to Amend Complaints*, dated Mar. 31, 2017 (Adv. Pro. 10-03496, Dkt. No. 1336).

<sup>2</sup> In this Opposition to Defendant’s Joinder and Supplemental MTD the Liquidators refer to the “Defendant.” Defendant was sued as “Allianzbank SPA/Unifortune Conservative Side Pocket” but appears on this motion as Unifortune Conservative Side Pocket.

<sup>3</sup> As alleged in the proposed Fourth Amended Complaints in adversary proceedings 10-03635 and 10-03636, upon information and belief, Defendant was a customer of a registered shareholder. See Proposed Fourth Amended Complaint (Adv. Pro. No. 10-03635), ¶ 33; Proposed Fourth Amended Complaint (Adv. Pro. No. 10-03636), ¶ 34.

Liquidators reserve the right to revise the caption in the event discovery reveals information contrary to the Funds records.<sup>4</sup>

## **ARGUMENT**

### **I. Incorporation Of The Liquidators' Omnibus Brief.**

Defendant joins in the Consolidated Motion to Dismiss Brief (Adv. Pro. 10-03496, Docket Number 960) (the "Consolidated MTD Brief"). In opposition to Defendant's Joinder and Supplemental MTD, the Liquidators adopt and incorporate herein, the Opposition to the Consolidated Opposition to Plaintiffs' Motion for Leave to Amend and Motion to Dismiss (the "Liquidators' Omnibus Brief"), filed in Adversary Proceeding No. 10-03496, on March 31, 2017 [Dkt. No. 1336].

### **II. Defendant Was Sufficiently Named Based On The Funds' Records.**

Defendant argues that "Allianzbank SPA/Unifortune Conservative Side Pocket" is a non-existing entity. Notably, Defendant does not argue that it did not receive the Redemption Payments at issue in this Adversary Proceeding. In any event, the allegations in the Proposed Amended Complaint are based, in part, on the records of the Funds. *See e.g.*, Proposed Fourth Amended Complaints, at p.1; *id.* ¶ 14. The Liquidators reserve their right to revise the caption and its complaint in the event discovery reveals information contrary to that in the Funds' records, such as a misnaming of the subject party defendant. *See* Fed. R. Civ. P. 15(c); *Datskow v. Teledyne, Inc.*, 899 F.2d. 1298 (2d Cir. 1990); *Glob. Crossing Estate Representative v. Alta Partners Holdings LDC (In re Glob. Crossing Ltd.)*, 385 B.R. 52, 66-69 (Bankr. S.D.N.Y. 2008) (amendments can be made for mistakes concerning the identity of the proper party, also known

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<sup>4</sup> Allianz Bank Financial Advisors SpA separately appeared and filed a Motion to Dismiss on this basis. (Dkt. Nos. 205, 228.) Allianz Bank, like Defendant, did not argue that it did not receive the Redemption Payments at issue in this action.

as a “misnomer or misidentification” of an existing party); *In re Randall’s Island Family Golf Centers*, No. 02-2278, 2002 WL 31496229, at \* 3 (Bankr. S.D.N.Y. 2002) (Amendments can be made to correct a “misnomer,” even where the plaintiff knew of the existence of the party but “were unaware of [the party’s] involvement in the transaction.”).

### CONCLUSION

For the foregoing reasons, the Liquidators respectfully request that Defendant’s Joinder and Supplemental MTD be denied and the Liquidators’ Motion to Amend be granted.

Dated: New York, New York  
April 6, 2017

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